

offence; a construction of the act which the court cannot think consistent with its spirit or letter.

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DON

This court is, therefore, of opinion, that the circuit court erred in directing the jury that, under the circumstances stated, the plaintiff below was entitled to his freedom, and doth reverse the judgment rendered by the circuit court, and remand the cause for further proceedings.

Judgment reversed.

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ERROR to the circuit court of the district of Columbia, in an action of trespass *vi et armis*, for entering the plaintiff's house, and taking away his goods. The defendant justified as collector of militia fines. The plaintiff replied, that at the time when, &c. he was one of the United States justices of the peace, for the county of Alexandria. - This replication, upon a general demurrer, was, by a majority of the court below, adjudged bad; whereupon the plaintiff sued out a writ of error, and the questions made on the argument were,

A justice of the peace, in the district of Columbia, is an officer of the government of the United States, and is exempt from militia duty.

The court martial has not exclusive jurisdiction of that question, and its sentence is not conclusive.

1. Whether a justice of the peace, for the county of Alexandria, was liable to do militia duty? and

2. Whether an action of trespass will lie against the officer who makes distress, for a fine assessed upon a justice of the peace by a court martial?

Trespass lies against a collector of militia fines, and no distress for a fine imposed by a court martial, upon a person not liable to be enrolled in the militia, the

G. Lee, for the plaintiff in error. This case depends upon the act of congress of *March 3d*, 1803, entitled "an act, more effectually to provide for the organization of the militia of the district of Columbia," *vol. 6*, p. 237.

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having no ju-
risdiction in
such cases.

The 6th section says, " that the commanding officers of companies, shall enrol every able bodied white male, between the ages of eighteen and forty-five years, (*except such as are exempt from military duty, by the laws of the United States*) resident within his district."

The act of congress of the 8th of May, 1792, vol. 2, p. 93, § 2, exempts from militia duty, " The Vice-President of the United States ; the officers, judicial and executive, of the government of the United States ; the members of both houses of congress, and their respective officers ; all custom-house officers, with their clerks ; all post-officers, and stage-drivers, who are employed in the care and conveyance of the mail of the post-office of the United States ; all ferrymen, employed at any ferry on the post-road ; all inspectors of exports ; all pilots ; all mariners actually employed in the sea-service of any citizen or merchant within the United States ; and all persons who now are, or may hereafter be, exempted by the laws of the respective states."

This act applies not only to such officers as then existed, but to all such as might thereafter be created.

If the plaintiff is an officer, judicial or executive, of the government of the United States, he is exempted.

In *Marbury's case*, ante, vol. 1, p. 168, this court decided, that a justice of the peace, for the district of Columbia, was an officer, and that he became such as soon as the commission was signed, sealed, and ready to be delivered. If the commission, therefore, is a criterion, to decide who is an officer, we are at a loss to conceive what objection can be taken.

The justices of the peace for the district of Columbia, are appointed by the president of the United States, by and with the advice and consent of the senate, and are commissioned by the president. Their powers and duties are prescribed by the act of congress, " concerning the district of Columbia, vol. 5, p. 271, § 11. Whether those powers are judicial or executive, or both, is immaterial.

Jones, contra.

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1. A justice of the peace, in the district of Columbia, is not a *judicial* officer of the *government* of the United States.

By the act of congress, those appointed for the county of Alexandria, are to exercise the same powers and duties as justices of the peace in Virginia. The expression in the act of 1792, "officers judicial of the government of the United States," means only the judges of the supreme and inferior courts of the United States. Justices of the peace in the states are not considered as judicial officers. By the constitution of Massachusetts, the judicial officers are to hold their offices during good behaviour, and yet the commissions of justices of the peace are limited to seven years. So the constitution of the United States says, that the judges, both of the supreme and inferior courts, shall hold their offices during good behaviour; but by the act of congress, the justices of the peace in the district of Columbia, are to hold their offices only for five years. These justices, therefore, are either not judges, or the constitution has, in this respect, been violated. It is plain, however, that congress did not consider them as judges. A sheriff sometimes acts as a judicial officer in holding elections; and some of the officers in the executive departments, exercise judicial functions in many cases, but they are not, therefore, judges. An act of congress may give judicial powers to certain officers, but they are not, therefore, judges.

2. He is not an executive officer "of the *government* of the United States." This description was intended, by the act of 1792, to comprehend only the officers of the superior departments, or those which strictly constitute the government of the United States, in its limited sense. This is to be inferred, because the act goes on to enumerate by name, all the inferior officers which it meant to exempt. Why *enumerate*, if the general description comprehended the whole?

3. The circuit court of the district of Columbia has not jurisdiction of this question. The question who is

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to be enrolled in the militia, and the assessment of the fines, are matters submitted exclusively to the courts martial, which are courts of peculiar and extraordinary jurisdiction, specially appointed for that purpose, by the act of congress, *vol. 6, p. 244, § 8*. The words are, the "presiding officer shall lay before the said court (the battalion court of inquiry) all the delinquencies as directed by law, whereupon, they shall proceed *to hear and determine*." There is no provision for revising the decisions of those courts martial.

They are final and conclusive, like those of an ecclesiastical court, or a court of admiralty.

If they have jurisdiction, and especially if they have exclusive and final jurisdiction in the case, the officer who executes their orders is justified. He cannot be considered as a trespasser.

C. Lee, in reply. There can be no doubt but the plaintiff is an officer. There can be as little that he is an officer judicial or executive, or both; and if he is not an officer of the government of the United States, he is not the officer of any other government. There is no distinction between an officer of the United States, and an officer of the *government* of the United States. An officer appointed by the president of the United States, to an office created by a law of the United States, and exercising his authority in the name of the United States, must be as much an officer of the government of the United states, as any other officer in the United States.

The reason of enumerating other officers by name, was, because it might, perhaps, be doubted, whether they would come under the general description of officers judicial and executive.

As to the jurisdiction of the circuit court. A limited power given to certain tribunals, not extending to all persons, cannot controul the general jurisdiction given to that court.

Whenever a peculiar limited jurisdiction is given to certain persons, and they exceed it, not only their

officers, but they themselves are liable to an action. They are all subject to the general law of the land. If this were not the case, and a court martial should compel a man of more than forty-five years of age, for example, to perform militia duty, and continue to fine him from time to time, there would be no redress.

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The court martial in the present case, had no jurisdiction over the person of the plaintiff. He was exempt, and, therefore, they could delegate no authority to their officer.

February 19.

MARSHALL, Ch. J. delivered the opinion of the court.

In this case two points have been made by the plaintiff in error.

1st. That a justice of the peace, in the district of Columbia, is, by the laws of the United States, exempt from militia duty.

2d. That an action of trespass lies against the officer who makes distress, in order to satisfy a fine assessed upon a justice of the peace, by a court-martial.

1. Is a justice of the peace exempt from militia duty?

The militia law of the district refers to the general law of the United States, and adopts the enumeration there made, of persons who have this privilege. That enumeration commences with "the Vice-President of the United States, and the officers judicial and executive of the government of the United States."

It is contended by the plaintiff, and denied by the defendant, that a justice of the peace, within the district, is either a judicial or an executive officer of the government, in the sense in which those terms are used in the law.

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It has been decided in this court, that a justice of the peace is an officer; nor can it be conceived, that the affirmative of this proposition, was it now undecided, could be controverted. Under the sanction of a law, he is appointed, by the president, by and with the advice and consent of the senate, and receives his commission from the president. We know not by what terms an officer can be defined, which would not embrace this description of persons. If he is an officer, he must be an officer under the government of the United States. Deriving all his authority from the legislature and president of the United States, he certainly is not the officer of any other government.

But it is contended, that he is not an officer in the sense of the militia law; that the meaning of the words "judicial and executive officers of the government," must be restricted to the officers immediately employed in the high judicial and executive departments; and, in support of this construction, the particular enumeration which follows those words, is relied on; an enumeration which, it is said, would have been useless, had the legislature used the words in the extended sense contended for by the plaintiff. A distinction has also been attempted between an officer of the United States, and an officer of the *government* of the United States, confining the latter more especially to those officers who are considered as belonging to the high departments; but, in this distinction, there does not appear to the court to be a solid difference. They are terms which may be used indifferently to express the same idea.

If a justice of the peace is an officer of the government of the United States, he must be either a judicial or an executive officer. In fact, his powers, as defined by law, seem partly judicial, and partly executive. He is, then, within the letter of the exemption, and of course must be considered as comprehended within its proper construction, unless there be something in the act which requires a contrary interpretation. The enumeration which follows this general description of officers, is urged as furnishing the guide which shall lead us to the more limited construction. But to this

argument, it has very properly been answered, by the counsel for the plaintiff, that the long enumeration of characters exempted from militia duty which follows, presents only *one* description of persons ; custom-house officers, and those who hold a commission from the President, or are appointed by him ; and of these, by far the greater number do not hold such commission. The argument, therefore, not being supported by the fact, is inapplicable to the case.

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The law furnishing no justification for a departure from the plain and obvious import of the words, the court must, in conformity with that import, declare that a justice of the peace, within the district of Columbia, is exempt from the performance of militia duty.

It follows, from this opinion, that a court martial has no jurisdiction over a justice of the peace, as a militia-man ; he could never be legally enrolled : and it is a principle, that a decision of such a tribunal, in a case clearly without its jurisdiction, cannot protect the officer who executes it. The court and the officer are all trespassers.

The judgment is reversed, and the cause remanded for further proceedings.

THE UNITED STATES v. GRUNDY AND
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THE UNITED
STATES
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GRUNDY
AND
THORNBURGH.

ERROR to the circuit court of the United States, for the district of Baltimore, in an action for money had and received for the use of the United States, by the defendants, as assignees of Aquila Brown, jun. a bankrupt ; it being money received by the defendants for the sale of the ship *Anthony Mangin*, which ship the United States alleged was forfeited to them by reason that Brown, in

Under the
act of Con-
gress of Dec.
31, 1792,
which de-
clares, that if
a false oath